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SUPREME COURT, U. S.

No. 603

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

ROBERT L. DOWELL, an infant, who sues by A. L. DOWELL, his father and next friend, et al.,

and

STEPHEN S. SANGER, JR., on behalf of himself and all others similarly situated,

Petitioners,

versus

THE BOARD OF EDUCATION OF THE OKLAHOMA CITY PUBLIC SCHOOLS, et al.,

and

JENNY MOTT MCWILLIAMS, a minor, and DAVID JOHNSON MCWILLIAMS, a minor, who sue by WILLIAM ROBERT MCWILLIAMS their father and next friend, on behalf of themselves and all other similarly situated,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF RESPONDENT THE BOARD OF EDUCATION OF THE OKLAHOMA CITY PUBLIC SCHOOLS ET AL., IN OPPOSITION

J. HARRY JOHNSON
2105 First National Bldg.
Oklahoma City, Oklahoma 73102

LESLIE L. CONNER
630-640 Hightower Bldg.
Oklahoma City, Oklahoma 73102

Counsel of Record for Respondent, The Board of Education of the Oklahoma City Public Schools

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TABLE OF AUTHORITIES

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OPINIONS BELOW

The Petition for the Writ adequately shows the Opinions and Orders below.

JURISDICTION

The Petition for the Writ shows the alleged jurisdictional grounds.

QUESTIONS PRESENTED

1. Whether a Writ of Certiorari should issue to review a stay order of the court of appeals.

2. Whether Chief Judge Murrah was disqualified to sit on the panel that stayed the trial courts order.

3. That justice can best be served by denying the Petition for Writ of Certiorari and remanding the case to the Court of Appeals Tenth Circuit where appeals were docketed October 14, 1969 as case No. 541-69 and No. 542-69. That the Court of Appeals Tenth Circuit may determine all the issues between all of the parties and any party desiring may then file a petition for Writ of Certiorari.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The case involves the correctness of a stay order issued by the court of appeals. No constitutional provisions or statutes are directly involved in this proceeding.

STATEMENT OF THE CASE

The facts pertinent to the issue raised by the Petition for the Writ are those which relate to the order of August 13, 1969, entered by the district court (Appendix, 35a to Petition For Writ) and the stay order entered by the Tenth Circuit (Appendix 38a). References to the Appendix are to the Appendix to the Petition for a Writ of Certiorari. On June 12, 1969, the school board filed its Plan for the 1969-1970 year (Appendix, 13a) in which it stated that boundary changes in an attempt to

achieve racial balance were not feasible at that time and stated its opposition to mandatory or forced bussing of pupils (Appendix 19a). A further implementation of the previously approved plan in operation.

Trial was had. The Court ordered the school board to prepare a supplement to its Plan that would make boundary changes designed to increase the white to black ratio in Harding Junior High School and Northeast High School.

Acting in response to the instructions of the court (Appendix, 20a), the board filed a boundary change supplement which made more extensive boundary changes which affected hundreds of pupils not previously affected. This supplemental Plan was forthwith approved by the trial court without a hearing (Appendix, 9a, 11a). It was made effective for the 1969-1970 school year.

In the same order the court directed the school board to file a comprehensive Plan by November 1, 1969.

The McWilliams class asked the court of appeals to stay that part of the trial court's order effecting the boundary changes and transfers. The court of appeals stayed and vacated the trial court's order insofar as it pertained to the boundary changes, pointing out that any appeal after the comprehensive Plan had been presented as ordered by the trial judge would be procedurally expedited (Appendix, 38a).

At page 6a, Appendix, the trial court stated:

> "The Court holds and finds that this School Board must, within a period between now and October 30, prepare and submit to the people a long range integration-desegregation plan.
>
> "The Court holds and finds that thereafter the plan will be heard and it will be determined what to be done about it."

On August 29, 1969, Mr. Justice Brennan, on application of petitioners, vacated the order of the court of appeals and on September 2, after filing of briefs by Respondent McWilliams continued his order in effect pending disposition of the Petition for Certiorari to be filed in this case.

REASONS THE WRIT SHOULD NOT BE GRANTED

1. The decision of the Court below is not in conflict with any decision of this court and the court of appeals has decided no important question of federal law.

The Respondents McWilliams class has extensively briefed this argument in their brief in opposition and the Respondent School Board does not have any additional authorities or argument to present in its brief.

2. Chief Judge A. P. Murrah was qualified to participate in the case below.

Respondent School Board adopts the brief and argument of the Respondents McWilliams. Any citation of authority by the School Board would be repetitious.

3. That Justice can best be served by denying the petition for Writ of Certiorari and remanding the case to the Court of Appeals, Tenth Circuit where appeals were docketed as cases #541-69 and #542-69.

Respondent School Board shows the court that appeals have been docketed in Case #541-69 and case #542-69 in the Court of Appeals, Tenth Circuit. These two appeals were docketed pursuant to notices of appeal filed September 12, 1969, by the respondent School Board. The record on appeal is complete and contains a complete transcript of the testimony involved in this case.

The Respondent School Board submits there is now before the Court of Appeals a case in which all parties can be heard regarding the trial court's Order and the issues determined in a orderly fashion. There is no

question in this case at this time which would warrant a granting of the petition for Writ of Certiorari by this Court. The order of Justice Brennan entered September 3, 1969, in effect provided the relief which Petitioner sought in this case as the Plan for the school year 1969-1970, approved in the Order of August 13, 1969 (Appendix) is in operation at the present time in Oklahoma City, Oklahoma. A remand in this case would best serve the ends of justice to all concerned. The Petition states as an additional ground that the Court below has so far departed from the accepted practice as to require this Court's supervision. Respondent School Board submits this question is now moot and does not constitute any valid reason for granting the Writ. Respondent School Board again reiterates that two cases are now pending in the Court of Appeals with a complete record of pleadings and the transcript of testimony. The Petitioners chief complaint of the action by the lower court was the lack of a record. This is no longer a valid complaint as the record on appeal has been docketed as of October 14, 1969. This court has not hesitated to dismiss where it appears that the case is not appropriate for adjudication; Rice vs. Sioux City Memorial Park Cemetary 349 U.S. 70, 99 L.Ed. 897, 75 S.Ct. 614; See also footnote #2. Such is the case at bar.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for Writ of Certiorari should be denied.

Respectfully submitted

J. HARRY JOHNSON
2105 First National Bldg.
Oklahoma City, Oklahoma

LESLIE L. CONNER
CONNER, LITTLE & CONNER
630-640 Hightower Bldg.
Oklahoma City, Oklahoma

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